

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julian Phillips	Team: Squad #9	CCRB Case #: 201609610	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/19/2016 6:40 PM	Location of Incident: Canal Street and Broadway on sidewalk; outside the Broadway-Lafayette IRT station on sidewalk	Precinct: 01	18 Mo. SOL 5/19/2018	EO SOL 5/19/2018	
Date/Time CV Reported Mon, 11/21/2016 8:56 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/21/2016 8:56 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Brian Flynn	02084	938492	001 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Brian Flynn	Abuse: On an unknown date, outside the entrance to the uptown number 6 train at the Bleeker Street station in Manhattan, Sergeant Brian Flynn threatened to arrest § 87(2)(b).	
B.SGT Brian Flynn	Abuse: On November 19, 2016, in front of 421 Broadway in Manhattan, Sergeant Brian Flynn seized § 87(2)(b)'s property.	
C.SGT Brian Flynn	Off. Language: On November 19, 2016, in front of 421 Broadway in Manhattan, Sergeant Brian Flynn made remarks to § 87(2)(b) based upon ethnicity.	

### Case Summary

On November 21, 2016, § 87(2)(b) filed this complaint with the CCRB via telephone.

On an unknown date in the autumn of 2016, Sgt. Brian Flynn of the 1<sup>st</sup> Precinct approached § 87(2)(b) an unlicensed vendor carrying handbags that she had been peddling earlier that day, outside the entrance to the uptown number 6 train at the Bleeker Street station in Manhattan. Sgt. Flynn, who was in an unmarked black police vehicle, allegedly told § 87(2)(b) that he would arrest her (**Allegation A**). Sgt. Flynn left the location without arresting or issuing a summons to § 87(2)(b).

On November 19, 2016 at approximately 6:40 p.m., Sgt. Flynn approached § 87(2)(b) on the sidewalk in front of 421 Broadway in Manhattan. Sgt. Flynn seized a bundle of handbags that § 87(2)(b) had intended to sell (**Allegation B**). As he lifted the handbags, Sgt. Flynn allegedly called § 87(2)(b) “stupid black African Muslim.” Sgt. Flynn then allegedly said to § 87(2)(b) “you’re going to go home very soon” and “there’s a white guy going to the White House—he’s going to send all you guys home” (**Allegation C**). Sgt. Flynn left the location with § 87(2)(b)’s handbags without arresting or issuing a summons to § 87(2)(b).

§ 87(2)(g)

There is no video footage of this incident.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) was offered both investigation and mediation at the time she provided her initial telephone statement, on November 22, 2016, as well as at the time she provided her sworn statement, on December 2, 2016. On both occasions, § 87(2)(b) rejected mediation.
- As of December 20, 2016, no Notice of Claim has been filed regarding this incident (**Board Review 01**)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (**Board Review 03**)
- Sgt. Brian Flynn has been a member of the NYPD for 11 years and has 19 prior CCRB allegations involving eight cases, with no substantiated allegations (**Board Review 04**).
  - In case number 200809881, Sgt. Flynn was the subject of an Abuse of Authority—Stop allegation, which was exonerated.

- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- In case number 201509866, Sgt. Flynn was the subject of Offensive Language—Race and Offensive Language—Ethnicity allegations, both of which were unsubstantiated. The complainant in this case, a street vendor of African origin, alleged that Sgt. Flynn made a racist remark and stated that he would “send” the complainant “back” to his country of origin.
- In case number 201600657, Sgt. Flynn was the subject of an Abuse of Authority—Threat of Arrest allegation, which was exonerated. The complainant in this case, an unlicensed street vendor, alleged that Sgt. Flynn threatened to arrest him for selling merchandise without a license.

#### **Potential Issues**

- In her sworn statement, § 87(2)(b) [REDACTED] alleged that Sgt. Flynn threatened to arrest her outside the entrance to the uptown number 6 train at the Bleeker Street station. § 87(2)(b) [REDACTED] was unable to provide a date for this incident. Sgt. Flynn, who stated that he had interacted with § 87(2)(b) [REDACTED] numerous times, stated that he did not interact with the complainant at this location. § 87(2)(g) [REDACTED]  
[REDACTED]
- In her sworn statement, § 87(2)(b) [REDACTED] stated that there were numerous witnesses to her interaction with Sgt. Flynn on November 19, 2016. § 87(2)(b) [REDACTED] provided partial names for eight witnesses, but refused to provide additional contact information, stating that the witnesses were afraid to provide testimonies against Sgt. Flynn. § 87(2)(b) [REDACTED] was asked to provide the undersigned’s contact information to any potential witnesses who wished to make statements pursuant to her complaint. To date, no witnesses have reached out to the undersigned. Fieldwork at the location of the incident was conducted on December 5, 2016, but no witnesses were located.

#### **Findings and Recommendations**

##### **Allegations not pleaded**

- **Force: Push** – In her initial complaint on November 21, 2016, her telephone statement on November 22, 2016, and her in-person interview on December 2, 2016, § 87(2)(b) [REDACTED] alleged that Sgt. Flynn “pushed” her subsequent to seizing her handbags, causing her to fall on her back. In a follow-up telephone statement provided on December 6, 2016, however, § 87(2)(b) [REDACTED] was asked to clarify whether Sgt. Flynn had intentionally pushed her or accidentally bumped into her. § 87(2)(b) [REDACTED] stated that she believed that Sgt. Flynn had

bumped into her in an accidental manner. § 87(2)(g)

**Allegation A – Abuse of Authority : On an unknown date, outside the entrance to the uptown number 6 train at the Bleeker Street station in Manhattan, Sergeant Brian Flynn threatened to arrest** § 87(2)(b)

§ 87(2)(b) stated that, on an unknown date in autumn 2016, she left the intersection of Canal Street and Broadway, where she had been selling handbags without a license to do so, and walked to the entrance of the uptown number 6 train at the Bleeker Street station. § 87(2)(b) was accompanied by a friend, who she could not identify, and was carrying a hand truck holding a cardboard box containing handbags. § 87(2)(b) stated that Sgt. Flynn approached her in an unmarked black vehicle with several unidentified officers. § 87(2)(b) alleged that, from the vehicle, Sgt. Flynn informed her that he was going to arrest her and confiscate her possessions. § 87(2)(b) told Sgt. Flynn that she was too old to go to prison, and the officers left the location without arresting her or issuing her a summons.

Sgt. Flynn stated that, although he has interacted with § 87(2)(b) on numerous occasions, he never interacted with her at the entrance to the number 6 train at the Bleeker Street station. Sgt. Flynn stated that he did not speak to or threaten to arrest § 87(2)(b) at that location on any date.

§ 87(2)(g)

**Allegation B – Abuse of Authority: On November 19, 2016, in front of 421 Broadway in Manhattan, Sergeant Brian Flynn seized** § 87(2)(b) **s property**

§ 87(2)(b) stated that, on November 19, 2016 at approximately 6:30 p.m., she had begun to arrange handbags on a cloth sheet on the sidewalk in front of 421 Broadway in Manhattan. § 87(2)(b) intended to display these handbags for sale, but had not yet transacted any sales. § 87(2)(b) was immediately informed by other street vendors that Sgt. Flynn was present in the area, and immediately began packing these handbags into a cloth bundle in preparation for leaving the location.

Before § 87(2)(b) was able to depart, Sgt. Flynn approached her from behind and grasped the cloth bundle of handbags, which was on the sidewalk in front of § 87(2)(b) § 87(2)(b) immediately removed her hands from the bundle. Sgt. Flynn lifted the bundle. As he lifted the bundle, Sgt. Flynn accidentally bumped into § 87(2)(b) with his upper body, causing her to fall. Sgt. Flynn left the location with the bundle of handbags before § 87(2)(b) stood up. § 87(2)(b)

§ 87(2)(b) was not provided with a receipt or summons of any kind, and her confiscated property was not returned to her

Sgt. Flynn stated that, on November 19, 2016 at approximately 6:40 p.m., he was driving south on Broadway when he observed § 87(2)(b) on the sidewalk in front of 421 Broadway in Manhattan. Sgt. Flynn recognized § 87(2)(b) as an unlicensed peddler, observed that she had laid a sheet with handbags displayed atop it on the sidewalk, and heard § 87(2)(b) say audibly “Louis Vuitton” and “Michael Kors,” indicating to him that she was advertising these handbags for sale. Sgt. Flynn observed that the handbags were counterfeit based on their packaging, patterning, and other physical characteristics. Sgt. Flynn receives annual training on how to recognize counterfeit handbags. Sgt. Flynn did not observe § 87(2)(b) transact any sales at this time.

After stopping his car, Sgt. Flynn walked towards § 87(2)(b) with the intention of arresting her for selling counterfeit merchandise. When he was approximately 15 to 20 feet away from § 87(2)(b) § 87(2)(b) Sgt. Flynn observed that she noticed him approaching. § 87(2)(b) immediately turned around and began walking westward on Canal Street. Sgt. Flynn did not pursue § 87(2)(b) § 87(2)(b) because he was concerned that a foot pursuit would constitute a safety hazard due to heavy traffic conditions.

Sgt. Flynn continued on foot to the sidewalk in front of 521 Broadway, picked up the handbags left by § 87(2)(b) and carried them to his vehicle. After briefly looking for § 87(2)(b) in the vicinity of the incident, Sgt. Flynn brought the handbags to the 1<sup>st</sup> Precinct stationhouse and vouchered them as Found Property.

Section 165-71 of the New York State Penal Law states that an individual who “manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark” is guilty of trademark counterfeiting in the third degree (**Board Review 05**). It is undisputed that, on the date of the incident, § 87(2)(b) intended to sell handbags in violation of this statute. It remains in dispute, however, whether or not Sgt. Flynn observed § 87(2)(b) engage in actions that constituted “offer[ing] for sale goods which bear a counterfeit trademark” on the day of the incident prior to seizing her property.

Sgt. Flynn stated that he observed § 87(2)(b)'s handbags displayed on the sidewalk and heard her verbally advertise the handbags for sale prior to approaching her. § 87(2)(b) in contrast, stated that she did not advertise her handbags for sale on the date of the incident. § 87(2)(b) stated that, after beginning to unpack her handbags, she was immediately warned by other peddlers of Sgt. Flynn's presence and began to re-pack her handbags in preparation for departing the location.

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation C – Offensive Language: On November 19, 2016, in front of 421 Broadway in Manhattan, Sergeant Brian Flynn made remarks to § 87(2)(b) based upon ethnicity**

§ 87(2)(b) alleged that, as he seized her bundle of handbags, Sgt. Flynn called her a “stupid black African Muslim.” § 87(2)(b) further alleged that, after he lifted up her bundle of handbags, Sgt. Flynn said, “You’re going to go home very soon” and “There’s a white guy going to the White House—he’s going to send all you guys home.”

Sgt. Flynn stated that, as § 87(2)(b) walked away from him before he came closer to her than 15 feet, he did not say anything to § 87(2)(b). Sgt. Flynn denied saying “stupid black African Muslim,” “you’re going to go home very soon” or “there’s a white guy going to the White House—he’s going to send all you guys home.”

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

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Squad: 9

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date